

STATE OF MICHIGAN  
IN THE SUPREME COURT  
ON APPEAL FROM THE COURT OF APPEALS  
Fitzgerald, P.J., and Bandstra and Gage, J.J.

SUPREME COURT

MAR 2003

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In the Matter of C.A.W., Minor.

Supreme Court No.: 122790  
Court of Appeals: 235731  
Macomb Circuit Court No.: 92-36958 NA

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellant,

v

LARRY A. HEIER,

Appellee,

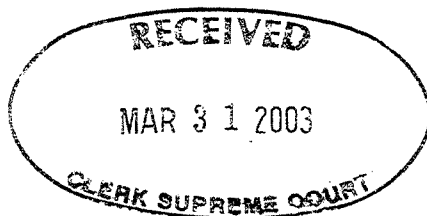
and

DEBORAH ANN WEBER AND ROBERT RIVARD,

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Respondents.

**APPELLEE, LARRY HEIER'S SUPPLEMENTAL BRIEF**



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**THERE IS NO JURISDICTIONAL ISSUE**  
**WHICH HAS BEEN PRESERVED ON APPEAL**

The Court has invited supplemental briefs on the issue of jurisdiction of the Circuit Court.

The apparent jurisdictional issue that was raised at oral argument was whether the Circuit Court lost jurisdiction to the Court of Appeals because the mother had appealed the termination of her parental rights. However, that appeal had **not** been filed at the time Larry Heier filed his Motion to Intervene.

According to the Clerk of the Court of Appeals, the mother's Claim of Appeal was filed on January 25, 2001. Larry Heier filed his Motion to Intervene on January 23, 2001. ***(6b-9b)***

There is no other issue of jurisdiction which has been preserved for appeal. The Attorney General argued in the Circuit Court, that the Court could not exercise jurisdiction over Larry Heier's petition once the children had been committed to the Michigan Children's Institute. The Circuit Court never decided that issue and the Attorney General did not file a cross-appeal to the Court of Appeals. The issue of jurisdiction was not briefed or argued either in this Court or in the Court of Appeals. Unless the issue relates to subject matter jurisdiction, the issue has been waived.

This Court has repeatedly held that subject matter jurisdiction only relates to the "abstract power to try a case of the kind or character of the one pending and is not

dependent on the particular facts of the case.” *Travelers Insurance v Detroit Edison*, 465 Mich 185, 204; 631 NW2d 733 (2001).

See also, *Campbell v St. John Hospital*, 434 Mich 608; 455 NW2d 695 (1990).

It cannot be seriously contended that the Family Division of the Circuit Court does not have the abstract power to try issues of paternity and child custody.

Whether the Court properly exercised that jurisdiction is a separate issue which can be waived if not preserved by raising the issue in a timely manner. This exact issue was decided by this Court in *In Re Hatcher*, 443 Mich 426, 505 NW2d 834 (1993). The Court held:

“ We hold, however, that the probate court’s subject matter jurisdiction is established when the action is of a class that the court is authorized to adjudicate, and the claim stated in the complaint is not clearly frivolous.”

\* \* \*

“Want of jurisdiction must be distinguished from error in the exercise of jurisdiction.”

\* \* \*

“Jurisdiction to make a determination is not dependent upon the correctness of the determination made.”

There is no jurisdictional issue that has not been waived. This Court should decide this appeal on the merits of the issue for which leave to appeal was granted.

Respectfully submitted,

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